

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *ag* D.C.  
05 NOV -3 PM 4: 59  
THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TN, MEMPHIS

LOUIS BROGDON,

Plaintiff,

v.

No. 02-2947 B

HARRY SIMS and JIM SMITH,

Defendants.

---

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT & RECOMMENDATION  
AND ORDER OF DISMISSAL

---

On December 7, 2004, this Court entered an order directing Magistrate Judge Diane Vescovo to conduct a settlement conference in the instant action. Following the conference, held on February 11, 2005, the magistrate judge issued a report recommending that the complaint of the Plaintiff, Louis Brogdon, against the Defendants, Harry Sims and Jim Smith, be dismissed with prejudice as a sanction for the failure of Brogdon and his counsel, Paul Springer to appear at the settlement conference. Because Plaintiff's counsel provided an explanation for their failure to appear, the Court overruled magistrate judge's recommendation and directed the magistrate judge to reschedule a settlement conference. In so doing, the Court further directed the Plaintiff, prior to the scheduling of the conference, to reimburse the Defendants for expenses each incurred in traveling to Memphis, Tennessee for the previously scheduled settlement conference and admonished Brogdon that any further failures to appear would result in dismissal of his claims.

This document entered on the docket sheet in compliance  
with Rule 58 and/or 79(a) FRCP on 11-4-05

113

On May 27, 2005, the magistrate judge directed Brogdon to reimburse Jim Smith \$264.66 and Harry Sims \$105.20 within 30 days of the date of the order and to certify to the Court that the payments were made. In the magistrate judge's order, Plaintiff was again warned that failure to make timely payments would result in dismissal of the lawsuit. Because Plaintiff and his counsel failed to make the payments or certification as directed, on October 12, 2005, Magistrate Judge Vescovo entered a report and recommended that the instant complaint against Sims and Smith be dismissed with prejudice.

Although a dismissal is the ultimate sanction to be imposed against an offending party, there are times when dismissal is necessary because of a party's consistent failure to abide by directives of the Court. In this instance, Plaintiff's counsel has routinely either failed to appear when directed to do so or has appeared belatedly. Thus, this is not the first occasion when Mr. Springer has run afoul of the Court's instructions and orders. Finally, the Court notes that a party who disagrees with the proposed findings and recommendations must file written objections within ten days of service of the recommendations. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Upon a review of the docket, the Court notes that no objections to the report and recommendation have been filed by the Plaintiff within the time allowed.

Accordingly, based upon the Plaintiff's failure to abide by the directives of Magistrate Judge Vescovo to appear at a settlement conference and to reimburse the Defendants for his failure to appear, it is hereby ordered that Magistrate Judge Vescovo's report and recommendation is adopted in full and that the Plaintiff's remaining complaint against Defendant Sims and Smith is DISMISSED WITH PREJUDICE.

**IT IS SO ORDERED** this 31 day of November, 2005.



---

J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 113 in case 2:02-CV-02947 was distributed by fax, mail, or direct printing on November 4, 2005 to the parties listed.

---

Harry Sims  
12 Griers Chapel Road  
Trenton, TN 38382

John B. Starnes  
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ  
165 Madison Ave.  
Ste. 2000  
Memphis, TN 38103

Paul James Springer  
LAW OFFICE OF PAUL J. SPRINGER  
100 N. Main Bldg.  
Ste. 3015  
Memphis, TN 38103

Leo Maurice Bearman  
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ  
165 Madison Ave.  
Ste. 2000  
Memphis, TN 38103

Jim Smith  
1151 Hwy 348  
New Albany, MS 38652

Honorable J. Breen  
US DISTRICT COURT